

**Notice of Allowability**

Application No.

09/380,888

Examiner

Lauren Q Wells

Applicant(s)

DUPUIS, CHRISTINE

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the Response filed 1/12/04.
2. ☒ The allowed claim(s) is/are 18-21, 24-34, 36-53 (renumbered as 1-33).
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 9/13/99
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

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**DETAILED ACTION**

The IDS filed 9/13/99 was considered by the Examiner on 3/9/01. However, the Examiner failed to line through the "Class/Subclass" section on page 3 of IDS and failed to add the dates of the "Other Documents" on pages 1-2 of the IDS. Thus, the IDS has been re-initialed and signed with the above corrections.

***Examiner's Amendment***

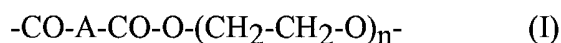
An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mark Sweet on 4/29/04.

The application has been amended as follows:

1) Following the periods in claims 40, 51, and 52, please insert the following:

" ; wherein said hydrophilic gelling material is a hydrophilic gelling polymer chosen from at least one water-soluble and water-dispersible terephthalic copolyester oligomer comprising dicarboxylate repeating units of formula (I):



wherein

-A is chosen from 1,4-phenylene and sulfo-1,3-phenylene groups, and optionally, 1,3-phenylene groups,

-n ranges from 1 to 4

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- at least 35 mol% of said units of formula (I) are units of formula (I) wherein A is a 1,4-phenylene group and n is equal to 1,
  - at least 7 mol% of said units of formula (I) are units of formula (I) wherein A is a sulfo-1,3-phenylene group, and
  - the weight average molecular mass of said at least one copolyester oligomer is less than 20,000 polystyrene equivalents, as measured by gel permeation chromatography in dimethylacetamide containing  $10^{-2}$  N of LiBr, at 100°C,
- and wherein said hydrophilic gelling material comprising from 0.5 to 15% by weight of the composition relative to the total weight of the composition.

#### ***Reasons for Allowance***

The following is an examiner's statement of reasons for allowance:

Claims 18-21, 24-34, 36-53 are allowable over the prior art, as the prior art neither teaches nor suggests a composition comprising an aqueous gel which comprises a hydrophilic gelling material, wherein the gel has the rheological properties recited in claim 18, and wherein the gelling material is a hydrophilic gelling polymer comprising dicarboxylate repeating units of formula (I), devices comprising such a composition, and methods of applying such a composition to the skin.

The closest prior art is US Patent No. 4,300,580, which teaches hair grooming methods using linear polyesters. While '580 does teach water soluble and water dispersible terephthalic copolyester oligomers comprising dicarboxylate repeating units, it does not teach the repeating units of formula (I), as defined by the instant independent claims (i.e., claims 18, 40, 51 and 52). Aside from not teaching the mol% of A as the 1,4-phenylene group or the sulfo-1,3-phenylene

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group, or the molecular weight of the oligomer, the reference does not teach  $n$  equal to one, which is required by the instant claims. In fact, '580 teaches that  $n$  is an integer from two to about 10, thereby teaching away from  $n$  equal to 1. Thus, for the above reasons, the oligomers of '580 and the instant invention are distinct and not obvious over one another.

The Terminal Disclaimer filed 1/12/04, is sufficient to overcome the Obviousness-type Double Patenting Rejection over US 6,338,858, in the previous Office Action. In the previous Office Action, the Double Patenting Rejection stated that the only difference between the instant claims and '858 was that '858 did not teach the percent weight of the hydrophilic gelling material in composition. However, this is not the only difference. '858 requires their compositions to be solids, whereas the instant claims are directed toward gels. Though solids and gels are distinct forms, it is obviousness to change the form of a composition by modifying a compositions viscosity to achieve different forms individualized for specific uses.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

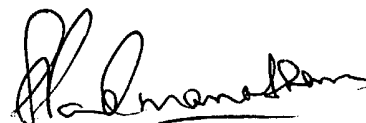
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is 571-272-0634. The examiner can normally be reached on M&R (5:30-4).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lqw



SREENI PADMANABHAN  
SUPERVISORY PATENT EXAMINER